

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
SEPTEMBER 17, 2009 Session

**IN THE CASE OF CONSERVATORSHIP OF HELEN E. JEWELL a/k/a  
LISA JEWELL, A Person Under Disability**

**JAMES W. JEWELL, ET AL. v. HELEN ELIZABETH JEWELL**

**Direct Appeal from the Chancery Court for Williamson County  
No. C34537 Timothy L. Easter, Judge**

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**No. M2008-02621-COA-R3-CV - Filed December 4, 2009**

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This appeal involves a petition filed by a mother and father seeking to be named co-conservators for their adult daughter. The daughter is highly intelligent and educated, but according to the testimony of five physicians, she suffers from mental illness. The trial court appointed the mother and father co-conservators of the daughter's property and person. The daughter appeals. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed**

ALAN E. HIGHERS, P.J., W.S., delivered the opinion of the court, in which HOLLY M. KIRBY, J., and J. STEVEN STAFFORD, J., joined.

M. Matthew Milligan, Franklin, TN, for Appellant

Thomas F. Bloom, Nashville, TN; Mary Catherine Kelly, Franklin, TN, for Appellees

## OPINION

### I. FACTS & PROCEDURAL HISTORY

On March 31, 2008, James W. Jewell (“Father”) and Terecia Jewell (“Mother”) filed a sworn petition seeking to be appointed co-conservators over the medical affairs of their thirty-six year-old daughter, Helen Elizabeth Jewell, also known as Lisa Jewell (“Lisa”).<sup>1</sup> They alleged that Lisa was disabled due to mental health issues and alcohol dependency. Specifically, they claimed that Lisa had been diagnosed with “Medically Paranoid - Bipolar II, Schizoaffective Disorder with delusions and hallucinations” and also “chemical dependency.” The petition stated that Lisa had been hospitalized twenty to twenty-five times over the past fourteen years due to her mental health issues and chemical dependency, and it detailed various instances in which Lisa had either refused to seek treatment or simply left hospitals against medical advice. According to the petition, Lisa had again been hospitalized at a psychiatric facility from March 20th to March 25th, 2008. The petition stated that during Lisa’s hospitalization, she gave permission for her treating physician at the hospital, Dr. Harold W. Jordan, to speak with Mother regarding her treatment, but after one conversation between Dr. Jordan and Mother, Lisa withdrew such consent. The petition also stated that between March 28th and March 30th, 2008, Lisa had inexplicably suffered a black eye, a swollen jaw, a broken tooth, a cut lip, and injuries to her fist, requiring medical attention at the emergency room.

The petition was accompanied by two affidavits from other physicians, who stated that they had personally examined Lisa on March 31, and they recommended that a conservator be appointed for both her person and property.<sup>2</sup> One of the affidavits was from Dr. Roy Elam, who stated that a conservator was needed because Lisa was a danger to herself and others. He stated that Lisa had been admitted to multiple psychiatric hospitals but was unable to maintain her treatment and engaged in

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<sup>1</sup> We note that Father and Mother were no longer married.

<sup>2</sup> Tennessee Code Annotated section 34-3-104 provides, in relevant part:

The petition for the appointment of a conservator, which shall be sworn, should contain the following:

....

(7) The name of the respondent’s physician or, where appropriate, respondent’s psychologist and either:

(A) A sworn medical examination report described in § 34-3-105(c);

(B) A statement that the respondent has been examined but the sworn medical examination report has not been received but will be filed before the hearing; or

(C) A statement that the respondent refuses to be examined voluntarily, with a request that the court direct the respondent to submit to medical examination[.]

Tennessee Code Annotated section 34-3-105(c) provides that “[e]ach physician’s or psychologist’s sworn report shall contain the following: (1) The respondent’s medical history; (2) A description of the nature and type of the respondent’s disability; (3) An opinion as to whether a conservator is needed and the type and scope of the conservator with specific statement of the reasons for the recommendation of conservatorship; and (4) Any other matters as the court deems necessary or advisable.” In this case, the physicians each filled out a standard form “Doctor’s Affidavit” provided by the Williamson County Chancery Court with designated spaces for the statutorily required information.

“multiple risk-taking behaviors.” He also stated that Lisa’s “manic and agitated state” resulted in alcohol abuse. The other affidavit was submitted by Dr. Tobi Fishel, who stated that Lisa had demonstrated that she was “unable to maintain mental/psychiatric stability.” Dr. Fishel stated that Lisa needed a conservator because she was “unable to make rational choices[,] in need of a thorough and comprehensive evaluation, [and] a danger to self and others if she were not being watched by [her] parents.” Dr. Fishel also stated that she had spoken to Lisa’s psychiatrist, Dr. Thomas Lavie, and that he “agrees with this plan at this time.”

On the same day the petition was filed, the trial court entered an order appointing Mother and Father temporary co-conservators with the right to make decisions regarding Lisa’s health care. The trial court also appointed a guardian ad litem and an attorney ad litem for Lisa.

Mother and Father subsequently filed a sworn amended petition, alleging that Lisa was unable to make personal, medical, or financial decisions for herself, and seeking the authority to make such decisions for her. The amended petition stated that Lisa was unemployed and owned no real property, although she owned personal property worth approximately \$10,000 and was the beneficiary of a revocable trust of which her uncle was the trustee.

Lisa’s attorney ad litem filed a motion to dismiss the petition and amended petition, claiming that the affidavits supporting the petition, filed by Drs. Elam and Fishel, were “deficient in that they performed no medical or psychological examinations, they only interviewed [Lisa].” The motion also asserted that Lisa’s “treating psychiatrist,” Dr. Lavie, had consulted with her approximately two weeks after the petition was filed and concluded that she was not in need of a conservator. Based on the alleged deficiencies in the affidavits and the opinion of Dr. Lavie, Lisa sought dismissal of the petitions. However, the clerk and master denied the motion to dismiss. Lisa also filed an answer admitting that she had “a diagnosis of Bipolar II” but denying that she had been diagnosed with schizoaffective disorder or alcohol dependency.

Three witnesses testified at a hearing before the clerk and master: Lisa, Mother, and Lisa’s aunt. The depositions of five physicians were also admitted as exhibits. Lisa had been admitted to Middle Tennessee Mental Health Institute approximately three weeks before the hearing, and she testified that Mother was “blowing everything out of proportion.” She stated that she was first diagnosed with a “chemical imbalance” when she was in college, and she acknowledged that she had been diagnosed with “Bipolar II Rapid Cycling.” She claimed that her doctors had “flirted around with the idea of Schizoaffective but it’s really Rapid Cycling,” and that she had “always had the Bipolar II Rapid Cycling, [but] not Schizo.” Lisa said she also suffered from “hyperactivity and sort of cage syndrome,” stating, “So when I’m in hospitals my behavior is a bit bizarre because I don’t like being trapped in small places.” Lisa said that “part of [her] trauma [was] not only manic depression but it’s a form of post-traumatic stress for perpetually being in psych wards[.]”

Lisa testified that she had earned a Master’s Degree in 2001 and subsequently taught at a university in Kentucky. She also enrolled in a program to obtain her Ph.D., but did not complete it. At the time of the hearing, Lisa had been unemployed for approximately two years, and she last

worked at the family business. Lisa testified that Father had “been nice enough to give [her] a trust fund,” which permitted her to remain unemployed. She had been receiving \$1600 per month from the trust fund, but she said that after the conservatorship petition was filed, he reduced her income to \$1000 a month.

About three months before the petition was filed, Lisa had been arrested and charged with DUI and reckless endangerment. At approximately 4:00 p.m. on December 8, 2007, she drove through a barricade in downtown Franklin during a Christmas festival, where many pedestrians were present. She reportedly had a strong odor of alcohol about her, was unable to perform field sobriety tasks to the satisfaction of police officers, and refused a breathalyzer test. As a result, Lisa lost her driver’s license and, as a condition of her probation, was ordered to report to a treatment facility for a minimum of four to six weeks of intensive inpatient treatment and to follow all recommendations made by the staff at the facility. Lisa described the DUI as “a socially drinking incident.” She went to an inpatient treatment facility in Arizona as required for her probation, but she left after three to five days. Lisa testified that she “was not ready for rehab at that point.” The records from the facility indicate that Lisa was deemed not “appropriate” for its treatment program. Mother and one of Lisa’s physicians both testified that Lisa was turned away from the facility because they concluded she was too sick to be treated there.

Lisa testified that she was currently living alone in a house provided by Father, and that Mother provided the furnishings for the house. Lisa claimed that she was able to function living on her own. She said that she had always been responsible, kept her doctor’s appointments, and taken her medications as prescribed by her physicians. Mother testified that Lisa did take her medications as instructed while she was in college, but that Lisa seemed to get sicker after she moved back home. She said Lisa would pace a lot during the middle of the night, start screaming and hitting the walls while in the shower, and go for walks alone, talking out loud and cursing. Mother said people would call her and say they had seen Lisa walking down the middle of the road where she was not safe. Mother said she had personally seen Lisa walk right out in front of a car without looking, and that the car “bumped” her and caused her to fall. Mother said that on another occasion, she found Lisa walking down the road at night in the snow, without appropriate clothing, after she had been drinking.

Mother said Lisa would not make sense when they talked to her. She said Lisa would hear voices, and that on one occasion, she told Mother to call the police because someone was hurting her, but there was no one there. Mother testified that Lisa lost a lot of weight because she would not eat much, and if Mother encouraged her to eat or took food to her, Lisa would throw it at her. Mother said she could not convince Lisa to go back to the doctor, and Lisa would not allow Mother to speak with the doctor either. Mother said that she and Father would try to convince Lisa to go to the hospital, but that they could not make her go. Mother said that Lisa had overdosed on her medication on more than one occasion, and once she was hospitalized in intensive care for several days. She said Lisa “ran from the hospital” on two or three other occasions. Mother described one incident when she and Father were on their way to a psychiatric hospital with Lisa, and as they exited the interstate, Lisa climbed out the back window of the car while it was still moving and started

pacing back and forth on an overpass bridge over the interstate. She said Lisa got back in the car when police arrived. Mother said there were numerous other incidents that made her fear for Lisa's safety. Mother testified that she did not want to control Lisa's life, she simply wanted Lisa to have the support and medical treatment she needed to be able to regain her independence.

Mother testified that Father had provided houses for Lisa to live in over the years, and that Lisa would damage them. Mother testified that she, Father, and Father's wife would occasionally clean Lisa's house for her. Mother testified that it appeared that Lisa was eating in her bed, as there would be food dumped in the bed and plates and silverware beneath the bed. She said there was food piled up on the stove, and food and broken dishes that had been thrown against the walls. She said there was dog feces throughout the house and even on Lisa's bed linens. Mother said two to three months of laundry would be built up into a pile, and that some of her laundry would be in the yard where the dogs dragged it outside. Mother said that there were stacks of burned things on the stove, such as pots that had been left on burners.

Mother testified that Lisa had hurt herself from time to time in the past, and she described the injuries Lisa suffered during the weekend before the conservatorship petition was filed. Mother said she went to Lisa's house to check on her, as she usually does, and that when she arrived, she saw "a fair amount of blood" at the entrance to Lisa's bedroom. She said Lisa was in bed, and that "her chin was real black, very swollen; underneath her mouth had been cut and was just laid open and she had broken off two teeth." Mother said Lisa also had a black eye and a bruised nose, and that her hands were swollen across her knuckles and noticeably bruised. Mother said there was also vomit beside the bed. According to Mother, Lisa told her that she had fallen down and that the vomit was from her cat.

Lisa's paternal aunt testified that she went to Lisa's house when she was injured, and there were holes in the wall and bathtub as if there had been "rage going on with just herself." She testified that the house was "very very nasty, [with] very much of a stench" and that the stove was blackened and burnt. She said that the house was simply unsanitary, but Lisa considered the house to be clean. Lisa's aunt testified that Lisa's vehicle "was probably the nastiest thing I've ever seen or smelled." She testified that there were unopened bags of medication in the car, in addition to food and "just horrible stuff" to the point where she would not sit in the car to move it. Lisa's aunt testified that Lisa would say she had a job when she did not and say that she had completed a treatment program when she had left after a few days. She testified that she had seen Lisa walking around town "in torment," and although Lisa was alone, she appeared to be yelling at something and was "very animated obviously." She said that although Lisa would not intentionally hurt anyone or herself, she would simply walk in front of traffic, and she would hit her parents or throw things at them when in a rage.

Lisa denied that her house was dirty and said there were not broken dishes all over the place, as Mother had claimed. Lisa said that her parents clean her house about once every three months but that it was not necessary. Lisa testified that she walked simply because she had no driver's license and enjoyed the exercise.

Dr. Elam, who provided one of the affidavits accompanying the petition for conservatorship, testified by deposition that he began treating Lisa, as her primary treating physician, when she was a teenager. Dr. Elam specialized in internal medicine, but he testified that he had a lot of experience in managing psychiatric problems because the majority of patient visits to internists are for psychiatric problems. Dr. Elam said he had seen Lisa several times when she was obviously very psychotic, but he had referred her to a psychiatrist and did not administer psychological tests to her himself. He said he regularly discussed Lisa's situation with the psychiatrist to whom she was referred and with Lisa's father, whom he also treated, over the years. Dr. Elam said it had been "some time" since he, personally, had seen Lisa prior to March 31, when he examined her and recommended that a conservator be appointed for her, but he still considered her one of his patients. Contrary to Dr. Elam's testimony, Lisa testified that she had seen Dr. Elam when she was between the ages of 21 and 32. She said that she was no longer Dr. Elam's patient because he had written her a letter in 2004 stating that he could no longer see her as a patient because he had begun teaching and was downsizing his medical practice. Dr. Elam did not recall writing such a letter and stated that he knew a psychiatrist who wrote such a letter to Lisa because she was so disruptive in his office that his staff did not want her to return.

Dr. Elam testified about the circumstances surrounding his examination of Lisa on March 31. He said Lisa's father told him that Lisa had harmed herself, so Dr. Elam recommended that they get her admitted to a psychiatric hospital. He then learned that Lisa would not sign herself into a hospital. Dr. Elam testified that because Lisa would not allow her psychiatrist, Dr. Lavie, to speak with Lisa's parents, he contacted Dr. Lavie and discussed getting her admitted to a psychiatric hospital for dual treatment of her alcohol condition and her psychosis, and Dr. Lavie agreed that was what she needed. When Lisa's parents took her to Dr. Elam's office on March 31, Lisa apparently believed that she was being taken to an oral surgeon. Dr. Elam testified that he came out to the parking lot to see Lisa in the car because he and her parents feared that she would "run off" if she got out of the vehicle. Dr. Elam said that Lisa's mental condition was readily apparent when he spoke with her, and that she was suffering from severe psychosis. He said he interviewed Lisa for less than ten minutes, but she "obviously was delirious. She was really unable to carry on a conversation with us that [] made any real sense at all." Dr. Elam said he "examined her in terms of seeing her face was all bruised and bloodied," but that he did not discuss Lisa's past hospitalizations with her because she was "not able to coherently discuss anything." Lisa testified that Dr. Elam did not "examine" her but did prescribe some penicillin for her busted lip. Dr. Elam said he did not charge anyone for his evaluation of Lisa on March 31, as he was "just trying to help out a friend."

Dr. Elam said the information he listed on his affidavit was in part based on what he learned from Lisa's father and his personal observation of her on March 31, but "mainly" it was based on his contact with her since she was a teenager. He stated again that he had seen Lisa many times in the past when she was psychotic. Dr. Elam said he was concerned that Lisa could be a danger to herself or others due to her history, her recent DUI, and the fact that she "looked like someone had beaten her or that something dreadful had happened to her. It did not look like she had just had a, quote, fall." He also said that at Lisa's past appointments, she "would be terribly ill kept and it was

apparent she hadn't bathed in some time and those kinds of things." Dr. Elam stated that someone suffering from severe psychosis was in no position to make decisions concerning their health and mental health treatment, and that alcohol abuse would also have a significant influence on one's ability to manage psychosis.

The second physician who submitted an affidavit in support of the petition, Dr. Tobi Fishel, also testified by deposition. Dr. Fishel was a clinical psychologist and faculty member at Vanderbilt University Medical Center. She had never seen Lisa prior to March 31, but she agreed to evaluate Lisa at Dr. Elam's request. Dr. Fishel said she was informed of Lisa's history by Dr. Elam and by Dr. Lavie, and she reviewed Lisa's medical chart electronically.<sup>3</sup> Dr. Fishel testified that she accompanied Dr. Elam to the parking lot to see Lisa, and that she tried to convince Lisa to come inside to her office for a private interview, but Lisa refused. She said she interviewed Lisa in the parking lot for ten to fifteen minutes and would have stayed longer but Lisa was very agitated. Dr. Fishel said Lisa was "not making a lot of sense," and she had "very severe" bruises and lacerations on her face. When asked why she did not refer Lisa's parents to Dr. Lavie, since he was her treating psychiatrist, Dr. Fishel explained that even in an urgent situation, they would not have been able to simply show up at Dr. Lavie's office and have Lisa evaluated. She said that he has a busy practice and schedule, and that another physician would have been on-call for him.

Dr. Fishel described schizoaffective disorder as a chronic condition having a very strong mood component, which can include delusions and poor contact with reality, in addition to a strong component in agitation and mood instability, which can cause someone to feel very depressed then very agitated, almost to a manic state. She said that with this diagnosis, one's condition could drastically change or deteriorate within a matter of days. She testified that many people with schizoaffective disorder need a conservator, although those who had extensive support, such as that provided in a group home, in addition to extensive therapy and medication, could hold jobs and be part of society. Dr. Fishel testified that Lisa's prognosis is worse than normal because she drinks alcohol and refuses to take her medications as prescribed. She said drinking alcohol while taking the medications Lisa had been prescribed would cause her to become "very, very sedated" so that she should not be driving, out walking around, or making important decisions. Dr. Fishel testified that based on her interview with Lisa, she believed Lisa was a danger to herself or others, meaning imminently suicidal or homicidal or so confused in her mind that she could not take care of herself.

Three other physicians also testified by deposition. Dr. Thomas Lavie, a board-certified psychiatrist, testified that he had been treating Lisa for nearly two years, and he had met with her approximately eighteen times during that period. Dr. Lavie said he had diagnosed Lisa with schizoaffective disorder as well as alcohol abuse and said she would be psychotic even when she was not having a mood disturbance. Dr. Lavie explained the term "psychotic" as referring to "someone who is not in touch with reality. . . . speaks in an incoherent fashion, a difficult to follow fashion, and also has hallucinations and delusions." He said delusions were "fixed false beliefs" and hallucinations included hearing and seeing things that other people do not hear and see. Dr. Lavie

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<sup>3</sup> Dr. Fishel testified that she and Dr. Lavie worked in the same department.

said that his relationship with Lisa was “to just manage her medications” and that he did not know a lot about her social life. Dr. Lavie said he was surprised to learn that Lisa lived alone. He said she “rarely, if ever” took her medications as he instructed, and “[s]he was always very irrational and delusional about the nature of what she was being treated for.” Dr. Lavie said he did not “fight her on it” because he thought that she would not come back. He described Lisa as irritable and very strong willed and said that “frequently when she disagrees with you, she is disagreeing about something that is psychotic in nature. . . . So she misconstrues reality and then argues with you about it.” He said Lisa is “beyond an irrational person, she has a psychotic disorder.”

Dr. Lavie said that Lisa would not allow him to discuss her treatment with anyone. Dr. Lavie explained that shortly after the conservatorship petition was filed, Lisa asked him to write a letter stating that she did not need a conservator. He said on that day she was “fairly stable for what I view Lisa to be,” and that she did not need a conservator “at that moment of that day,” so he agreed to write the letter for her. However, Dr. Lavie went on to say that “with Lisa things are subject to change very quickly.” He said he wrote the letter as her advocate thinking that if he could maintain her trust, she would continue coming to see him and taking her medications. Dr. Lavie said he did not consider Lisa to be a danger to herself or others except when alcohol was involved and she was behaving recklessly. When asked whether he thought Lisa needed a conservator, Dr. Lavie said he did not know if he could answer that question and reiterated, “my role with Lisa has been just to manage her medications, and she has pretty much dictated [that]. I don’t know that I know enough about her life to say who should be calling the shots for Lisa.”

Another of Lisa’s treating psychiatrists, Dr. Harold Jordan, testified as well. He had treated Lisa during her stay at Parthenon Pavilion psychiatric hospital around March 19th through March 25th, just prior to the filing of the conservatorship petition, and during her subsequent admissions since the petition was filed. Dr. Jordan said his impression of Lisa was that she suffers from schizoaffective disorder, has a tendency to engage in unreasonable and delusional behavior, and hears voices. Dr. Jordan said he had suspected that Lisa heard voices and that she ultimately admitted that she did. Dr. Jordan also said that Lisa engages in manic behavior, meaning that she is self-absorbed and thinks that whatever she does is all right. He said Lisa feels that because she is intelligent and articulate, she can engage in whatever behavior she wishes to engage in, such as driving through the barricade during the Christmas festival. Dr. Jordan recommended that Lisa receive long-term residential treatment, stating, “this young lady is not in control of her behavior and if she’s allowed to remain free in society at this point, her behavior is just absolutely – one cannot predict the kinds of behavior problems she might get into, and the damage to herself and other people.” Dr. Jordan also said that alcohol abuse would make Lisa’s condition worse and reduce her chance of long term recovery. He said Lisa does not understand how sick she really is and how important it is for her to avoid alcohol. Dr. Jordan testified that Lisa is a danger to herself not in the sense that she is suicidal, but because her behavior is of such a nature that it does not serve her best interest in terms of her health and welfare. He also said her idea that anything she does is okay could lead her to engage in impulsive behavior that could be injurious to herself and to others.



Dr. Jordan testified that the long-term prognosis for patients with schizoaffective disorder is generally very poor because patients take a long time, if ever, to develop the insight to realize they have a problem. He said Lisa does not realize that she has a problem and thinks that her parents and the doctors are abusing her. Dr. Jordan said Lisa has “very, very limited and deficient” reasoning and decision-making abilities and that she is incapable of making medical decisions or even day-to-day decisions for herself, or managing her own affairs. Dr. Jordan recommended that a conservator be appointed to make such decisions for her. He said that it should be a long-term conservatorship for both her medical concerns and other affairs. Dr. Jordan recommended that Lisa receive long-term residential psychiatric treatment in a secure facility for a minimum of one year. When asked if Lisa could ever be self-sufficient, he said not anytime soon. He said she should not even be allowed to drive because “she just does not make rational decisions.”

Dr. Cheryl Young-Wardell, a staff psychiatrist at Middle Tennessee Mental Health Institute where Lisa was currently a patient, testified that she had treated Lisa for about two weeks since her recent admission. Dr. Young-Wardell opined, to a reasonable degree of medical certainty, that Lisa suffers from schizoaffective disorder, which she described as a mental disorder in which you have symptoms of both schizophrenia and a mood disorder, such as bipolar. She also said Lisa had exhibited signs of mania. Dr. Young-Wardell said Lisa paced, talked to herself as if responding to “internal stimuli,” and drank water continuously and excessively to the point that her water intake had to be limited. She explained that patients with schizophrenia sometimes become obsessed with water, and that a volume overload of water could even lead to death. Dr. Young-Wardell testified that Lisa was given medications to treat her psychosis, which she explained as a “loss of reality” or being “present in body but not in mind.” She said Lisa would be able to do fairly well if she would take her medications as instructed, avoid alcohol, admit that she had an illness and accept treatment. Unfortunately, however, she said Lisa’s alcohol use had a devastating effect on her ability to take care of herself. She also testified that Lisa’s medication regimen was altered to include injections because Lisa had no insight into her illness and was unlikely to take her medications as instructed. She explained that “when you stop the medications the symptoms come back and likely worsen.”

Dr. Young-Wardell testified that Lisa is presently incapable of making important decisions for herself and “most definitely” in need of a conservator. She explained that Lisa is “in denial” about how sick she really is, and that Lisa continues to think that her parents are simply trying to control her life. Dr. Young-Wardell could not say how long Lisa would need to be on medications in order for her to be able to function on her own, but she said it would take a minimum of three to six months. She then said that she could not presently foresee Lisa *not* needing a conservator because Lisa is unable to accept her diagnosis and is “so fixated that she is well.” Dr. Young-Wardell testified that Lisa would likely be discharged from the hospital soon after the hearing, and she felt that Lisa should be placed in a group home, where she would receive assistance with her medications, the facility would ensure that she was eating well and taking care of her room, and she would be given a financial “allowance” to spend as she pleased. Dr. Young-Wardell said she would *hope* that Lisa would be able to make the transition and return to her home after six months or so. However, she said she could not say with certainty that Lisa would ever be able to return home because she was concerned that Lisa would not take her medications and that Lisa was showing signs

of alcohol dependence, while refusing to admit that she abused alcohol. In sum, Dr. Young-Wardell said that Lisa was in need of a “long term” conservator or guardian, for a period of at least one year.

Following the hearing, the clerk and master entered an order finding that Lisa is disabled and in need of a conservator. The clerk and master began by noting that Lisa is an extremely intelligent and educated person, but found that “[h]er intelligence makes it even more disturbing that she has no insight into the degree of her illness, the severity of her living conditions, or the effect of alcohol in relation to her illness.” She found that Lisa’s condition had deteriorated significantly over the past few years and that her inability to take care of her personal needs had created “an unacceptable and dangerous environment.” She found that Lisa’s extreme living conditions demonstrate an “inability to make reasonable decisions about her mental, physical, emotional, and environmental needs.” She found that the DUI incident and the unexplained injuries also demonstrate the potential danger to Lisa, and to others, of what could occur in the absence of intervention. The clerk and master described the testimony of Mother, Lisa’s aunt, and the five doctors as “competent and reliable.” She found by clear and convincing evidence that Lisa was “disabled within the meaning of the statute and i[n] need of the court’s assistance,” and that the least restrictive measure necessary to protect Lisa was “a full conservatorship . . . over [Lisa’s] property and person.” The clerk and master noted the love, concern, and support of Lisa’s parents and found them to be capable and proper persons to be responsible for her financial, mental and physical needs. Therefore, Mother and Father were appointed co-conservators of Lisa’s person and property.

Lisa filed a motion for judicial review of the findings of the clerk and master, pursuant to Tennessee Code Annotated section 16-16-201(b),<sup>4</sup> asserting that she was not in need of a conservator and that the petition should have been dismissed based on the allegedly deficient affidavits of Drs. Elam and Fishel. After reviewing the record, the chancellor entered an order sustaining the findings of the clerk and master on October 22, 2008. Lisa timely filed a notice of appeal.

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<sup>4</sup> Tennessee Code Annotated section 16-16-201 provides, in relevant part:

(a) In all counties where not otherwise specifically provided by public, private, special or local acts, all jurisdiction relating to the probate of wills and the administration of estates of every nature, including the estates of decedents and of wards under guardianships or conservatorships and related matters heretofore vested in the county court, the county judge or county chair, is hereby vested in the chancery court of the respective counties. . . .

(b) The clerk and master in such counties shall be authorized and empowered to grant letters of administration and letters testamentary, letters of guardianship and letters of conservatorship, appoint administrators and executors, appoint guardians and conservators, . . . and hear and determine all probate matters whether herein enumerated or not. . . . All action taken by the clerk and master shall be subject to review by the chancellor by simple motion, petition or the filing of exceptions as may be appropriate.

## II. ISSUES PRESENTED

Lisa presents the following issues, as we perceive them, on appeal:

1. Whether the affidavits of Drs. Elam and Fishel were insufficient to satisfy the statutory requirements when they were not Lisa's treating physicians and did not conduct an examination of her that included testing;
2. Whether the trial court committed reversible error when it failed to specify whether Lisa was fully or partially disabled and whether her disability was temporary or permanent;
3. Whether the trial court erred in concluding that the least restrictive alternative necessary to protect Lisa was a full conservatorship over her person and property.

For the following reasons, we affirm the decision of the chancery court.

## III. STANDARD OF REVIEW

A "conservator" or "coconservator" is "a person or persons appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a disabled person." Tenn. Code Ann. § 34-1-101(4). "Because of the value our society places on individual autonomy and self-determination, persons seeking the appointment of a conservator must prove by clear and convincing evidence that the person for whom a conservator is sought is a 'disabled person.'" *In re Conservatorship of Groves*, 109 S.W.3d 317, 330 (Tenn. Ct. App. 2003) (quoting Tenn. Code Ann. § 34-1-126). Due to this heightened standard, we must adapt our customary standard of review on appeal, "drawing 'a distinction between specific facts and the combined weight of these facts.'" *In re Conservatorship of Trout*, No. W2008-01530-COA-R3-CV, 2009 WL 3321337, at \*11 (Tenn. Ct. App. Oct. 15, 2009) (quoting *In re Audrey S.*, 182 S.W.3d 838, 861 n. 26 (Tenn. Ct. App. 2005)). We must determine whether the combined weight of the facts, as supported by a preponderance of the evidence, establishes clearly and convincingly that a conservatorship was warranted. *Id.* Clear and convincing evidence "eliminates all serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence" and "produce[s] in the fact-finder's mind a firm belief or conviction regarding the truth of the factual propositions sought to be established by the evidence." *In re Conservatorship of Groves*, 109 S.W.3d at 330 (citations omitted). A trial court's factual findings are presumed to be correct, and we will not overturn those factual findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d) (2008); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Watson v. Watson*, 196 S.W.3d 695, 701 (Tenn. Ct. App. 2005) (citing *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999)). When the resolution of the issues in a case depends upon the truthfulness of witnesses, the fact-finder, who has the opportunity to observe the witnesses in their manner and demeanor while testifying, is in a far better position than this Court to decide those issues. *Mach. Sales Co., Inc. v. Diamondcut Forestry Prods., LLC*, 102 S.W.3d 638, 643 (Tenn. Ct. App. 2002). "The weight, faith, and credit to be given to any

witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court.” *Id.*

This appeal also involves issues of statutory interpretation, which are questions of law. *In re Conservatorship of Trout*, 2009 WL 3321337, at \*11. We review a trial court’s conclusions of law under a *de novo* standard upon the record with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993) (citing *Estate of Adkins v. White Consol. Indus., Inc.*, 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)).

#### IV. DISCUSSION

##### A. *The Physicians’ Affidavits*

On appeal, Lisa claims that her parents’ petition should have been dismissed because the physicians who submitted affidavits in support of the petition were not her treating physicians or psychologists, and they did not perform a “real” examination of her. Tennessee Code Annotated section 34-3-104 provides that a petition for the appointment of a conservator shall be sworn and “should” contain the following information:

- (1) The name, date of birth, residence and mailing address of the respondent;
- (2) A description of the nature of the alleged disability of the respondent;
- (3) The name, age, residence and mailing address and relationship of the petitioner;
- (4) The name, age, mailing address and relationship of the proposed conservator and, if the proposed conservator is not the petitioner, a statement signed by the proposed conservator acknowledging awareness of the petition and willingness to serve;
- (5) The name, mailing address and relationship of the closest relative or relatives of the respondent and the name and mailing address of the person or institution, if any, having care and custody of the respondent or with whom the respondent is living. If the respondent has no then living spouse, child, parent or sibling, the petition shall so state and more remote relatives are not to be listed;
- (6) A summary of the facts supporting the petitioner's allegation that a conservator is needed;
- (7) The *name* of the respondent's physician or, where appropriate, respondent's psychologist *and* either:
  - (A) A *sworn medical examination report* described in § 34-3-105(c);
  - (B) A statement that the respondent has been examined but the sworn medical examination report has not been received but will be filed before the hearing; or
  - (C) A statement that the respondent refuses to be examined voluntarily, with a request that the court direct the respondent to submit to medical examination;
- (8) The rights of the respondent to be removed from the respondent and transferred to the conservator. The rights the court may remove may include, but are not limited to, the right to vote, dispose of property, execute instruments, make purchases, enter into contractual relationships, hold a valid Tennessee driver license, give or refuse

consent to medical and mental examinations and treatment or hospitalization, or do any other act of legal significance the court deems necessary or advisable; and (9) If the petition requests the conservator to manage the property of the respondent, the petition also shall contain:

(A) If the financial information about the respondent is known to the petitioner:

(i) A list of the property of the respondent, together with the approximate fair market value of each item and a statement whether the property listed is all of the respondent's property;

(ii) A list of the source, amount and frequency of each item of income, pension, social security benefit or other revenue received by the respondent;

(iii) A list of the usual monthly expenses of the respondent and an explanation of how these expenditures were met prior to the filing of the petition; and

(iv) A description of the proposed plan for the management of the respondent's property if a conservator is appointed; or

(B) If the financial information about the respondent is unknown to the petitioner, a request that the court enter an order authorizing the petitioner to investigate the respondent's property.

(emphasis added). Tennessee Code Annotated section 34-3-105(c) requires each physician's or psychologist's sworn report to contain the following: "(1) The respondent's medical history; (2) A description of the nature and type of the respondent's disability; (3) An opinion as to whether a conservator is needed and the type and scope of the conservator with specific statement of the reasons for the recommendation of conservatorship; and (4) Any other matters as the court deems necessary or advisable."<sup>5</sup>

Lisa contends that neither Dr. Elam nor Dr. Fishel "fit the statutory guidelines" because Dr. Elam admitted that he had not treated Lisa "in some time" prior to March 31, and Dr. Fishel had never treated her before. Lisa contends that because neither doctor was her "treating" physician, the petition was "fatally flawed from its inception." She claims that her treating physician, within the meaning of the statute, was Dr. Lavie.

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<sup>5</sup> Tennessee Code Annotated section 34-3-105(a) further provides, in relevant part:

If the respondent has been examined by a physician or, where appropriate, a psychologist not more than ninety (90) days prior to the filing of the petition and the examination is pertinent, the report of the examination shall be submitted with the petition. If the respondent has not been examined within ninety (90) days of the filing of the petition, cannot get out to be examined or refuses to be voluntarily examined, the court shall order the respondent to submit to examination by a physician or, where appropriate, a psychologist identified in the petition as the respondent's physician or psychologist or, if the respondent has no physician or psychologist, a physician or psychologist selected by the court.

...

We note that the statute instructs petitioners to identify the respondent's physician *or* psychologist, and to include *a* sworn medical examination report. It does not suggest that only one person will be qualified to submit an affidavit in support of the petition, as Lisa assumes.

Furthermore, Lisa does not cite any authority, and we have found none, supporting her proposition that a petitioner's failure to include the information listed in the statute requires dismissal of the petition. The statute provides that the information "should" be included, but it does not state that a petition without all of the information is void. In fact, Tennessee Code Annotated section 34-1-121 provides that the trial court has discretion to waive the requirements of the conservatorship statutes if it finds that it is in the best interest of the disabled person, particularly where strict compliance with a statute would place an undue burden on either the fiduciary or the disabled person. In this case, the petition stated that Lisa had withdrawn her consent for Mother to discuss her care with her treating physician at the psychiatric hospital, Dr. Jordan. In addition, the affidavit submitted by Dr. Fishel also identified Dr. Lavie as Lisa's psychiatrist and stated that he agreed with the idea of her parents petitioning to be appointed co-conservators. Mother and Dr. Lavie both testified that Lisa would not allow Dr. Lavie to communicate with her family members. Therefore, we find no error in the trial court's decision not to dismiss the petition due to the fact that the affidavits were filed by Drs. Elam and Fishel rather than Dr. Lavie.

Next, Lisa contends that because the statute instructs the petitioner to include a "sworn medical *examination* report," Tenn. Code Ann. § 34-3-104(7) (emphasis added), the affidavits of Drs. Elam and Fishel were deficient because they did not perform a "real" examination of her. Specifically, she points out that the physicians observed her for only ten minutes, in a parking lot rather than a clinical setting, where they did not perform psychological tests, but obtained information from Lisa's father. Again, Lisa cites no authority for her position that a certain type of examination must be performed in order for a physician to be qualified to submit an affidavit in support of the petition. Dr. Elam testified that he went out to the parking lot because of concerns that Lisa would run away if she got out of the car. Dr. Fishel testified that Lisa refused to come inside to be interviewed alone. Dr. Fishel also testified that she had interviewed many patients in vehicles while working at a psychiatric hospital, when they were brought in either by family members or in police cars. Dr. Fishel said she used the same protocol in observing and interacting with Lisa that she would have used when evaluating a patient in the emergency room. She said it would be rare for someone to administer psychological testing when performing this type of evaluation.

Dr. Elam testified that it was routine for a doctor trying to diagnose a patient's mental status to confer with family members about their observations of the patient's behavior. Dr. Fishel also testified that it was normal protocol to meet with a patient's family. Both physicians also contacted Dr. Lavie prior to submitting their affidavits. Dr. Elam testified that Lisa's mental condition was readily apparent and that she was obviously delirious when he saw her. He said he had also seen her on numerous other occasions in the past when she was psychotic. Even Dr. Lavie testified that a trained clinician could see someone for less than ten minutes and determine that he or she had a psychiatric or psychological need for a guardian if the patient was floridly psychotic or out of his or

her mind. He further testified that it was not unusual for an internist, such as Dr. Elam, to make that type of decision because internists make decisions regarding competency and observe floridly psychotic patients when making rounds in a hospital.

Considering all the circumstances of this case, we find that the examinations by Drs. Elam and Fishel were not so deficient as to require dismissal of the petition for conservatorship.

### ***B. Adequacy of the Trial Court's Order***

Next, Lisa contends that the trial court's order is deficient because it did not specify whether it found Lisa fully or partially disabled, or whether her disability was temporary or permanent. The chancellor sustained the clerk and master's order, which found "by clear and convincing evidence that [Lisa] is disabled within the meaning of the statute and is in need of the court's assistance," and that the least restrictive measure necessary to protect her was a "full conservatorship" over her property and person. The order also listed specific powers that were thereby removed from Lisa and transferred to the co-conservators, such as the right to execute instruments and the right to authorize or refuse medical treatment.

Tennessee Code Annotated section 34-1-126 provides that "[t]he court must find by clear and convincing evidence that the respondent is fully or partially disabled and that the respondent is in need of assistance from the court before a fiduciary<sup>6</sup> can be appointed." The term "disabled person" is defined as "any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of mental illness, physical illness or injury, developmental disability or other mental or physical incapacity." Tenn. Code Ann. § 34-1-101(7).

Based on the aforementioned statute, we have repeatedly explained that a petitioner in a conservatorship action "must prove two facts by clear and convincing evidence before a fiduciary can be appointed: (1) that the person for whom the conservatorship is sought 'is fully or partially disabled' and (2) that the person 'is in need of assistance from the court.'" *In re Armster*, No. M2000-00776-COA-R3-CV, 2001 WL 1285904, at \*4 (Tenn. Ct. App. Oct. 25, 2001) (quoting Tenn. Code Ann. § 34-11-126)<sup>7</sup>; *see also In re Conservatorship of Davenport*, No. E2004-01505-COA-R3-CV, 2005 WL 3533299, at \*7 (Tenn. Ct. App. W.S. Dec. 27, 2005); *Crumley v. Perdue*, No. 01-A-01-9704-CH00168, 1997 WL 691532, at \*2 (Tenn. Ct. App. Nov. 7, 1997). Obviously, if a court finds that a person is "disabled," it has necessarily found them to be either fully disabled or partially disabled. Nevertheless, Lisa argues that the trial court must specify in its order whether

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<sup>6</sup> The term "fiduciary" refers to "a guardian, coguardian, conservator or coconservator." Tenn. Code Ann. § 34-1-101(8).

<sup>7</sup> Tennessee Code Annotated sections 34-11-101 to 34-11-131 were transferred to sections 34-1-101 to 34-1-131.

it found the person fully or partially disabled, and temporarily or permanently, citing *In re Conservatorship of Groves*, 109 S.W.3d at 331, wherein the Court explained:

As the law now stands, the threshold question in every conservatorship proceeding is whether the person for whom a conservator is sought is disabled or incapacitated. If the answer is no, the trial court cannot appoint a conservator. If, however, the answer is yes, the court must then determine whether the person is fully or partially incapacitated and whether the incapacity is temporary or permanent. The trial court must also determine, based on the nature of the incapacity, whether the disabled person requires full-time supervision, protection, or assistance or whether partial supervision, protection, or assistance will suffice. If the trial court determines that the disabled person requires any sort of supervision, protection or assistance, it must enter an order appointing a conservator and must specifically “[e]numerate the powers removed from the respondent and vested in the conservator.” Tenn.Code Ann. § 34-3-107(2). Any power not specifically vested in the conservator remains with the person for whom the conservator has been appointed.

(footnote omitted). We interpret the Court’s statement in *Groves* to mean that the trial court, in determining the appropriate nature and extent of the duties of the conservator, must decide such issues as whether the person is fully or partially disabled, whether the incapacity is temporary or permanent, and whether the person requires full or part-time supervision, protection, or assistance. If the court concludes that supervision is necessary, it must then “enter an order appointing a conservator and must specifically ‘[e]numerate the powers removed from the respondent and vested in the conservator.’” *Id.* (citing Tenn. Code Ann. § 34-3-107(2).” However, the Court did not say that the trial court must also specifically state in its order all of its conclusions regarding whether the disability was full or partial, temporary or permanent, etc. Tennessee Code Annotated section 34-3-107 lists specific requirements for orders appointing conservators, stating that the order must “Name the conservator or conservators . . . Enumerate the powers removed from the respondent and vested in the conservator. . . . State any other authority or direction as the court determines is appropriate to properly care for the person or property of the disabled person,” and include other specific provisions if the conservator will have the right to manage property. However, it does not require the order to specify whether the person’s disability is full or partial, temporary or permanent.

Lisa has not cited any cases in which a court has specified whether a respondent’s disability was full or partial. To the contrary, the cases we have encountered only state whether the respondent was disabled and whether he or she was in need of the court’s assistance. *See, e.g., In re Hutcheson*, No. E2008-00737-COA-R3-CV, 2009 WL 981702, at \*22 (Tenn. Ct. App. Apr. 13, 2009) (affirming the trial court’s finding that the respondent was “disabled”); *In re Conservatorship of Davenport*, 2005 WL 3533299, at \*8 (discussing “the first prong of the statute (i.e., that she is a disabled person)” and concluding that the respondent was “disabled”); *Crumley*, 1997 WL 691532, at \*3 (“It is the opinion of this court that Ms. Crumley and Ms. Perdue established by clear and convincing evidence that Mr. Perdue was disabled and in need of the court’s assistance . . .”). As such, we find



no error in the trial court's order finding that Lisa is "disabled within the meaning of the statute and is in need of the court's assistance."

Regarding the "temporary or permanent" issue, Lisa's attorney ad litem requested, at the conclusion of the hearing, that the trial court include a provision in any order it entered stating that the case could be reviewed in nine months or one year in order to reevaluate Lisa's status. The court's order simply appointed Mother and Father co-conservators without including any provision regarding when the order could be reviewed.<sup>8</sup> Tennessee Code Annotated section 34-3-108(a) allows a disabled person, or any interested person on the disabled person's behalf, to petition the court at any time for termination or modification of the conservatorship. The disabled person may communicate his or her request to the court by any means, including oral communication or informal letter. Tenn. Code Ann. § 34-3-108(b). The court must conduct a hearing upon receipt of such a petition, and the conservator may be discharged or have its duties modified if the court determines that the respondent is no longer disabled, or that it is in the best interest of the respondent that the conservatorship be terminated. Tenn. Code Ann. § 34-3-108(a), (c). The preponderance of the evidence standard applies to termination of conservatorship proceedings. *In re Maxwell*, No. M2002-01654-COA-R3-CV, 2003 WL 22209378, at \*2, n.1 (Tenn. Ct. App. Sept. 25, 2003). Due to the availability of this statutory procedure, Lisa was not prejudiced by the trial court's failure to include the requested "review provision" in its order appointing the co-conservators.

### ***C. The Least Restrictive Alternative***

Finally, Lisa contends that a "full conservatorship" over her property and person was not the least restrictive alternative necessary to protect her. Tennessee Code Annotated section 34-1-127 provides that "[t]he court has an affirmative duty to ascertain and impose the least restrictive alternatives upon the disabled person that are consistent with adequate protection of the disabled person and the disabled person's property." Lisa contends that the trial court should have imposed a less restrictive conservatorship that was limited to addressing her medical affairs. As support for her argument, Lisa notes that she has a Master's Degree and had been living alone, and that she had always entered into contractual relationships and paid her bills in the past. She also points out Dr. Lavie's letter from April 18, 2008, in which he stated that Lisa was not, at that time, in need of a conservator. However, Dr. Lavie subsequently testified by deposition that although she did not need a conservator "at that moment of that day" when he wrote the letter, "with Lisa things are subject to change very quickly." He said he wrote the letter in an attempt to maintain her trust, and when asked whether he thought Lisa was in need of a conservator, Dr. Lavie said he did not know if he could answer that question. He explained that his role with Lisa was limited to managing her medications and said that he did not "know enough about her life to say who should be calling the shots for Lisa." To the contrary, however, Dr. Jordan, who treated Lisa in the psychiatric hospital, testified that she was not capable of making "day-to-day decisions" for herself or managing her own affairs, and that she was in need a conservator to make those decisions for her. Dr. Jordan testified that Lisa had

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<sup>8</sup> The order did state that Mother and Father had been serving as temporary co-conservators since March and had tried diligently to provide the assistance needed with the least amount of controversy.

“very, very limited and deficient” reasoning and decision-making abilities, and that she could not be self-sufficient anytime soon. He said that she needed a long-term conservator, whose powers were not limited to medical concerns. Dr. Young-Wardell, who treated Lisa at another psychiatric hospital, similarly testified that Lisa was not capable of making important decisions for herself and that she was “most definitely” in need of a conservator. Dr. Young-Wardell recommended that Lisa be placed in a group home where she would receive constant supervision, not only regarding her medications, but also her eating habits, financial choices, and hygiene. Both Dr. Elam and Dr. Fishel recommended that she be appointed a conservator over her person and property. Lisa points to Dr. Fishel’s general statement that someone with schizoaffective disorder can improve over time. However, as previously discussed, Lisa can request modification or termination of the conservatorship at any time and ask the trial court to determine whether she remains disabled. *See* Tenn. Code Ann. § 34-3-108.

In sum, we find clear and convincing evidence to support the trial court’s decision to grant the coconservators authority over Lisa’s property and person.

## **V. CONCLUSION**

For the aforementioned reasons, we affirm the decision of the chancery court. Costs of this appeal are taxed to the appellant, Helen Elizabeth Jewell a/k/a Lisa Jewell, for which execution may issue if necessary.

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ALAN E. HIGHERS, P.J., W.S.